

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

DANIELA AGUILERA,

Plaintiff,

vs.

AEGIS COMMUNICATIONS GROUP, LLC,
et al.,

Defendants.

Case No. 3:14-CV-05118-MDH

MOTION TO DISMISS

COMES NOW Defendant Aegis USA, Inc. (“AUSA”), and moves the Court to dismiss Counts III, IV, and VI of Plaintiff Daniela Aguilera’s (“Plaintiff”) Petition pursuant to Fed.R.Civ.P. 12(b)(6). In support of this motion, AUSA states:

1. Counts III, IV, and VI of Plaintiff’s Petition purport to state claims for unjust enrichment, breach of contract, and violations of the Trafficking Victims Protection Act, respectively.

2. Plaintiff’s breach of contract claim (Count IV) alleges that Plaintiff had an oral agreement for a one year program that was agreed-upon before the program began. As this Court has already decided on three previous occasions, Plaintiff’s breach of contract claim is barred by the Missouri statute of frauds, R.S.Mo. § 432.010.

3. In the alternative, if Plaintiff’s breach of contract claim does not fail as a matter of law, Plaintiff’s unjust enrichment claim (Count III) must be dismissed. Plaintiff alleges that an express oral contract governed the terms of her agreement. Where the rights at issue in a lawsuit are governed by express contractual terms, the “sole avenue of recovery” for a party seeking to enforce those rights “must also lie on that contract.” *Burrus v. HBE Corp.*, 211 S.W.3d 613, 619

(Mo. App. 2006). Plaintiff may not on the one hand claim her rights arise out of an express contract while on the other hand asserting a restitution-based theory of recovery at the same time.

4. Separately, Plaintiff's unjust enrichment claim fails for the additional reason that Plaintiff's claim is not actionable against her alleged employer as a matter of law. "If the [plaintiff] is already employed by the [defendant], the request for additional services . . . generally does not justify the inference of an offer to pay anything in addition to the compensation specified in the contract of employment." *Roebuck v. Valentine-Radford, Inc.*, 956 S.W.2d 329, 332 (Mo. App. 1997).

5. Count VI of Plaintiff's Petition is a hybrid claim for "forced labor" and "benefitting from forced labor" under Sections 1589(a)(2), (a)(4), and Section 1595 of the Trafficking Victims Protection Act. Plaintiff's claims fail as a matter of law because the Trafficking Victims Protection Act does not apply to Plaintiff's claim that she was "trafficked" from the United States to India to perform forced labor.

6. Moreover, even if the Trafficking Victims Protection Act applied, which it does not, Plaintiff's threadbare pleading fails to state a claim for benefitting from forced labor.

7. AUSA files herewith and incorporates as if fully restated herein its Suggestions in Support of this motion.

WHEREFORE, Defendant Aegis USA, Inc., prays the Court for an order granting this motion and dismissing Counts III, IV, and VI of Plaintiff's Petition, and for such other and further relief as the Court deems just and proper.

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2014 the foregoing was filed electronically with the Clerk of the Court and will be served via the Court's ECF system upon the following:

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